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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANGEL FERNANDO CASTRO-MURILLO,

Petitioner,

v.

Christopher LaROSE, Warden, Otay Mesa Detention Center, *et al.*,

Case No.: **26-cv-04130-BJC-MMP**

PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

I. Introduction

Petitioner challenges the constitutionality of his continued immigration detention following Respondents' decision to revoke a liberty interest they themselves affirmatively created and maintained through years of governmental action. The question presented is straightforward: whether the government may require a noncitizen to identify himself, disclose his residence, submit biometrics and fingerprints, undergo security vetting, obtain government-issued employment authorization, and openly remain in the community for years, only to abruptly revoke that liberty and subject him to mandatory detention without prior notice, without any individualized determination, and without constitutionally adequate process. The Constitution does not permit such an abrupt deprivation of liberty.

Petitioner did not evade federal immigration authorities. To the contrary, he affirmatively participated in the federal immigration system. He sought protection under the immigration laws, complied with every governmental requirement imposed upon him, submitted biometrics and fingerprints, underwent security vetting, disclosed his identity and residence, and remained continuously available to federal immigration authorities. Respondents thereafter authorized Petitioner to work in the United States by issuing a valid Employment Authorization Document and knowingly permitted him to remain openly in the community while his immigration case remained pending.

Respondents do not contend that Petitioner received advance notice that his liberty would be revoked, that he was afforded a meaningful opportunity to be heard before a neutral decisionmaker, or that they made any individualized determination explaining why detention suddenly became necessary after years of permitting him to remain at liberty. Nor do Respondents identify any changed circumstances, any newly discovered facts, or any individualized determination that Petitioner presents a danger to the community or a risk of flight. Instead, Respondents principally rely upon the assertion that INA § 235(b) authorizes Petitioner's detention. That assertion does not answer the independent constitutional question presented here: whether the government may revoke years of affirmatively recognized liberty without due process of law.

The Petition therefore presents two independent grounds for relief. First, Respondents lack statutory authority to invoke INA § 235(b) to detain a noncitizen who has long resided openly in the United States, affirmatively participated in the federal immigration system, and was arrested during an interior enforcement action rather than the inspection process governed by that statute. Second, even assuming statutory detention authority exists, Respondents violated the Fifth Amendment by revoking Petitioner's longstanding liberty without prior notice, without an individualized determination, and without constitutionally adequate procedures. Because Respondents establish neither a lawful statutory basis for Petitioner's detention nor compliance with the Due Process Clause, the Petition should be granted and Petitioner immediately released.

II. Respondents Fail to Rebut Petitioner's Statutory and Constitutional Claims

Respondents' Opposition does not meaningfully rebut either claim presented by the Petition. Rather than addressing the combined effect of Respondents' own affirmative governmental conduct over many years, the Opposition treats this case as though it involved nothing more than the detention of an arriving applicant for admission under INA § 235(b). That characterization ignores both the statutory question presented and the independent constitutional limitations governing the government's revocation of previously recognized liberty.

The Petition does not challenge Respondents' authority to initiate removal proceedings or adjudicate Petitioner's immigration status. Nor does Petitioner contend that participation in the asylum process alone immunizes a noncitizen from immigration detention. Rather, the Petition challenges Respondents' decision to invoke inspection-stage detention under INA § 235(b) after requiring Petitioner to identify himself, disclose his residence, submit biometrics and fingerprints, undergo security vetting, obtain government-issued employment authorization, and openly remain in the community for years while Respondents actively administered his immigration case.

Respondents likewise fail to answer Petitioner's constitutional claim. The Petition alleges that, after years of affirmative governmental conduct recognizing and regulating Petitioner's continued presence in the United States, Respondents abruptly deprived Petitioner of his physical liberty without prior notice, without any individualized determination, without identifying any changed circumstances, and without providing any meaningful opportunity to be heard before a neutral decisionmaker. Respondents do not contend that any of those procedural protections were afforded. Nor do they identify any individualized determination concluding that Petitioner presented a danger to the community or a risk of flight before taking him into custody.

Respondents' assertion that INA § 235(b) authorizes Petitioner's detention does not answer the central question presented by this case. The Opposition never explains why Petitioner was not detained when Respondents first learned of his presence in the United States, when they

required him to submit biometrics and fingerprints, when they completed security vetting, when they approved his employment authorization, when they issued him an Employment Authorization Document, or at any point during the years they knowingly permitted him to remain openly in the community while administering his immigration case. Nor do Respondents identify any intervening facts, changed circumstances, or individualized findings that suddenly made detention necessary years later. The Opposition therefore offers no explanation for the government's abrupt reversal of its own longstanding treatment of Petitioner's case.

Because Respondents fail to establish either that INA § 235(b) lawfully governs Petitioner's detention under these circumstances or that they afforded the process required by the Fifth Amendment before revoking Petitioner's liberty, the Opposition provides no basis for denying the Petition.

III. Respondents' Affirmative Conduct Created a Protected Liberty Interest That Could Not Be Revoked Without Constitutionally Adequate Process

For years, Respondents affirmatively exercised governmental authority over Petitioner's presence in the United States through the administration of his pending asylum application and the issuance of an Employment Authorization Document. Petitioner did not conceal his identity or avoid contact with immigration authorities. To the contrary, he voluntarily sought protection under the immigration laws by filing an Application for Asylum and for Withholding of Removal. In connection with that application, USCIS required Petitioner to appear for biometrics and fingerprinting, conducted security vetting, approved his application for employment authorization, and issued him an Employment Authorization Document valid through January 23, 2030. Throughout that process, Petitioner openly disclosed his identity, residence, fingerprints, and continued presence in the United States while complying with every governmental requirement imposed upon him.

These were not passive acts of governmental acquiescence. They were affirmative governmental decisions undertaken by the very agencies now seeking to justify Petitioner's detention. By directing Petitioner to submit biometrics and fingerprints, conducting security

vetting, approving employment authorization, and issuing an Employment Authorization Document, Respondents affirmatively authorized Petitioner to work in the United States while knowingly permitting him to remain openly in the community during the pendency of his asylum application. During that entire period, Respondents alleged no danger to the community, asserted no unacceptable risk of flight, and took no action to revoke the liberty they themselves had recognized and maintained.

The issuance of an Employment Authorization Document valid through January 23, 2030, was particularly significant. Respondents did more than acknowledge Petitioner's presence in the United States; they affirmatively authorized him to engage in lawful employment while his asylum application remained pending. Respondents never explain how those affirmative governmental actions are consistent with their present contention that Petitioner's detention was mandatory throughout that same period. If Respondents truly believed Petitioner was subject to mandatory detention under INA § 235(b), they offer no explanation why they simultaneously authorized him to reside and work openly in the community rather than detaining him.

Nor was this a period of governmental inaction. Respondents repeatedly exercised their authority over Petitioner's immigration case. They required him to appear for biometrics, verified his identity through fingerprinting, completed security vetting, approved his employment authorization, issued an Employment Authorization Document, and continued administering his pending asylum application. Having repeatedly exercised their authority in a manner that affirmatively permitted Petitioner to remain openly in the community, Respondents cannot now simply assert that detention was mandatory all along without explaining why those same facts did not warrant detention years earlier.

Respondents identify no intervening event that altered Petitioner's circumstances. They identify no newly discovered information, no violation of any reporting obligation, no criminal conduct, no danger to the community, no increased risk of flight, and no change in Petitioner's immigration status. In short, Respondents identify nothing that explains why detention suddenly

became necessary after years during which they knowingly permitted Petitioner to remain at liberty while actively administering his immigration case.

The liberty interest asserted here therefore arises not merely from Petitioner's lengthy residence in the United States. Rather, it arises from Respondents' own affirmative governmental conduct over an extended period of time. By requiring Petitioner's participation in the federal immigration system, verifying his identity, completing security vetting, authorizing him to work, and knowingly permitting him to remain openly at liberty in the community for years, Respondents created and maintained a protected liberty interest. Having done so, Respondents could not revoke that liberty without constitutionally adequate process.

Respondents identify no such process. They do not contend that Petitioner received advance notice that Respondents intended to revoke the liberty they had long permitted him to enjoy. They do not contend that Petitioner was afforded a meaningful opportunity to contest that deprivation before a neutral decisionmaker. Nor do they identify any individualized determination concluding that Petitioner presented a danger to the community or a risk of flight, or any changed circumstances explaining why detention suddenly became necessary after years during which Respondents themselves administered Petitioner's immigration case while permitting him to remain openly in the community.

Instead, Respondents principally rely upon the proposition that detention is authorized under INA § 235(b). But even assuming statutory detention authority exists, that authority does not eliminate the independent requirements imposed by the Due Process Clause. Once Respondents affirmatively established the legal relationship reflected in this record—requiring biometrics, conducting security vetting, issuing employment authorization, and knowingly permitting Petitioner's continued liberty—they were constitutionally required to provide notice, an individualized determination, and a meaningful opportunity to be heard before abruptly depriving Petitioner of his physical freedom. Respondents identify no such procedures, no individualized findings, and no changed circumstances justifying their abrupt reversal. Petitioner's continued detention therefore violates the Fifth Amendment.

IV. Respondents' Abrupt Reversal Violates the Fifth Amendment

Respondents' position rests upon the premise that Petitioner was always subject to mandatory detention under INA § 235(b). Yet Respondents never reconcile that position with their own years of affirmative conduct. They knew Petitioner's identity, knew where he resided, knew he lacked lawful immigration status, required him to submit biometrics and fingerprints, completed security vetting, approved his application for employment authorization, and issued him an Employment Authorization Document valid through January 23, 2030. Despite possessing all of that information, Respondents did not detain Petitioner. Instead, they continued administering his pending asylum application while permitting him to live and work openly in the community.

The Response never answers the most fundamental question presented by this case: What changed? Respondents identify no newly discovered facts, no change in Petitioner's immigration status, no violation of any governmental requirement, no criminal conduct, no individualized determination that Petitioner presented a danger to the community or a risk of flight, and no other intervening circumstance explaining why detention suddenly became necessary years after Respondents knowingly permitted Petitioner to remain at liberty. Their unexplained reversal cannot be reconciled with the procedural protections guaranteed by the Fifth Amendment.

This is not a case involving an individual first encountered during inspection or detained shortly after an unlawful entry. Nor is it a case in which Respondents were unaware of Petitioner's identity, whereabouts, or immigration circumstances. To the contrary, Respondents affirmatively administered Petitioner's immigration case for years. They required him to submit biometrics, verified his identity through fingerprinting, completed security vetting, approved his employment authorization, issued him an Employment Authorization Document valid through January 23, 2030, and permitted him to remain openly in the community while his asylum application remained pending. Having repeatedly exercised their authority in that manner, Respondents cannot now simply invoke INA § 235(b) without explaining why those same

circumstances, which did not warrant detention for years, suddenly required Petitioner's incarceration.

Respondents' abbreviated Response provides no such explanation. It merely states their legal position that Petitioner is subject to detention under § 1225(b)(2), acknowledges prior orders from this District directing custody hearings under § 1226(a), and does not oppose an order requiring such a hearing. Respondents do not address the absence of pre-deprivation notice, an individualized determination, or any changed circumstances justifying the revocation of Petitioner's liberty.

Due process requires more than a conclusory assertion that detention is authorized under a particular statutory provision. At a minimum, it requires procedures adequate to protect the liberty interest that Respondents themselves helped create through years of affirmative governmental action. The Fifth Amendment does not permit the government to abruptly abandon its own longstanding treatment of Petitioner's case without notice, an individualized determination, and a meaningful opportunity to be heard. Respondents identify none. Because Petitioner's detention rests upon an unexplained and unsupported reversal of the government's longstanding treatment of his case, it violates the Due Process Clause of the Fifth Amendment.

V. Immediate Release Is the Appropriate Remedy

Where detention violates the Constitution or the Immigration and Nationality Act, the traditional function of habeas corpus is to secure release from unlawful custody. Immediate release is therefore the appropriate remedy. Nothing in Respondents' Response identifies a lawful basis upon which Petitioner's present incarceration can continue.

Respondents have failed to establish that Petitioner's continued detention complies with either the statutory framework established by Congress or the procedural protections required by the Fifth Amendment. As discussed above, Respondents have not shown that INA § 235(b) lawfully governs Petitioner's detention under these circumstances, nor have they identified any constitutionally adequate procedures preceding Petitioner's arrest. Instead, after years of requiring Petitioner to participate openly in the federal immigration system—including

submitting biometrics, completing security vetting, obtaining government-issued employment authorization, and remaining at liberty while his asylum application was pending—Respondents abruptly deprived him of his physical liberty without identifying any changed circumstances or individualized justification for doing so.

The absence of any identified changed circumstances confirms that Petitioner's detention rests solely upon Respondents' unexplained reversal of their own longstanding course of conduct. For years, Respondents required Petitioner to submit biometrics, completed security vetting, approved his employment authorization, issued an Employment Authorization Document valid through January 23, 2030, and continued administering his pending asylum application while knowingly permitting him to remain openly in the community. Respondents identify no intervening event that justified abandoning that course and incarcerating Petitioner. Habeas corpus exists precisely to remedy such unlawful restraints on liberty.

The constitutional violation was complete when Respondents deprived Petitioner of his liberty without constitutionally adequate process. That violation cannot be cured by post hoc reliance upon a statutory detention theory or by proposing that Petitioner receive additional procedures only after he has already been deprived of his freedom. Habeas corpus exists to remedy unlawful present detention, not to authorize its continuation while the government attempts to justify it retrospectively.

Indeed, Respondents acknowledge that this Court has previously ordered custody hearings under § 1226(a) in materially similar cases and expressly state that they do not oppose such relief here. That position, however, does not restore Petitioner to the position he occupied before Respondents unlawfully deprived him of his liberty. Having detained Petitioner without constitutionally adequate process, Respondents cannot cure that violation simply by offering additional administrative procedures after the deprivation has already occurred. Nor have Respondents identified any changed circumstances or individualized justification demonstrating why Petitioner's continued incarceration is necessary pending such a hearing.

Nor have Respondents identified any individualized basis demonstrating that Petitioner's continued detention is necessary. They identify no individualized finding that Petitioner presents a danger to the community, no individualized finding that he presents an unacceptable risk of flight, and no determination that less restrictive alternatives to detention would be insufficient. Instead, Respondents ask only that Petitioner remain incarcerated while awaiting a future custody hearing. That request does not justify Petitioner's continued detention where Respondents have failed to establish that the detention itself is lawful.

Accordingly, because Respondents have failed to establish either a lawful statutory basis for Petitioner's detention or compliance with the procedural protections required by the Fifth Amendment, the Court should grant the Petition and order Petitioner's immediate release.

In the alternative, and only if the Court declines to order immediate release, Petitioner respectfully requests that the Court order Respondents to provide a prompt constitutionally adequate custody hearing before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention is necessary because he presents a danger to the community or a risk of flight, and at which less restrictive alternatives to detention are considered.

VI. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release from Respondents' custody.

In the alternative, and only if the Court declines to order immediate release, Petitioner respectfully requests that the Court order Respondents to provide a prompt constitutionally adequate custody hearing before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention is necessary because he presents a danger to the community or a risk of flight, and at which less restrictive alternatives to detention are considered.

Petitioner further requests such other and further relief as the Court deems just and proper.

Respectfully submitted,

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